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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,982	11/20/2003	Robert Eastman III	EOD-134-A	8151

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EXAMINER

SORKIN, DAVID L

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 09/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/717,982	Applicant(s) EASTMAN, ROBERT	
	Examiner David L. Sorkin	Art Unit 1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>01 March 2004</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Objections

1. Claim 19 should end with only one period instead of two.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-6, 8-11, 13-15, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paumen et al. (US 2003/0085234) in view of Starkweather (US 7,766). Regarding claim 1, Paumen ('234) discloses an apparatus (10) comprising a canister (11); a base unit comprising a housing (30) comprising a cradle section and a control panel section (see Fig. 2); a control unit disposed in the housing and a control panel (32) on the housing and in electronic communication with the control unit (see [0027]); at least one rotatable roller (45) in the cradle section; and an electric motor (see [0027]) operatively connected to the rollers for causing rotation thereof; said canister comprising a substantially cylindrical main body (12) and a cover (20) comprising a valve (28), said cover being sealingly attachable to said main body. Rather than disclosing a vacuum pump "in the housing" as claimed, Paumen ('234) explains that a vacuum pump should be attached to the apparatus but that the details of such vacuum pump are not important to his invention and a variety of known arrangements may be used (see [0030]). Furthermore, Paumen ('234) expressly (in [0008]) refers to Starkweather ('766) which discloses a similar vacuum food tumbling device where the

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vacuum pump is in the housing of the apparatus. Regarding claims 3 and 13, the cradle section has an arcuate cutout (see Fig. 2). Regarding claim 4 and 14, the cover has a valve and handle assembly (see Fig. 4). Regarding claims 5 and 15, Paumen ('234) discloses a flapper valve rather than a ball valve, but suggests that other valves can be used (see [0030]). Regarding claims 6 and 11, in the portion of Paumen ('234) which is Clegg (US 2,259,729) incorporated by reference in [0010] and [0027]), the container being translucent is disclosed (see col. 2, lines 6-10). Regarding claims 8 and 17, it would have been obvious to one of ordinary skill in the art to have used a trap to protect the vacuum pump. Regarding claim 9 and 18, in the portion of Paumen ('234) which is Clegg (US 2,259,729) incorporated by reference in [0010] and [0027]), four rollers are disclosed (see Fig. 3). Regarding claim 10, the base has slots (37).

4. Claims 2 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paumen et al. (US 2003/0085234) in view of Starkweather (US 7,766) as applied to claims 1 and 11 above, and further in view of Hodges et al. (US 1,740,302). Paumen et al. (US 2003/0085234) and Starkweather (US 7,766) do not disclose a storage section with a hinged cover. Hodges ('302) teaches a storage section (7) with a hinged cover (13,14). It would have been obvious to one of ordinary skill in the art to have provided the apparatus of Paumen et al. (US 2003/0085234) in view of Starkweather (US 7,766) with a storage section having a hinged cover, to store ice and thereby preserve the freshness of food while it is being process as taught by Hodges ('302) (see page 1, lines 81-93).

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5. Claims 7, 16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paumen et al. (US 2003/0085234) in view of Starkweather (US 7,766) as applied to claims 1 and 11 above, and further in view of Miyata et al. (US 4,785,727). Paumen et al. (US 2003/0085234) and Starkweather (US 7,766) do not disclose the canister having a pair of grooves alignable with rollers of the base unit. Miyata ('727) teaches a pair of grooves (on either side of 69) alignable with roller of a base unit. It would have been obvious to one of ordinary skill in the art to have provide the canister of Paumen et al. (US 2003/0085234) in view of Starkweather (US 7,766) with grooves to help guide the canister in its motion as taught by Miyata ('727) (see col. 6, lines 30-31).

Double Patenting

6. Claims 1-19 of this application conflict with claims 1-19 of Application No. 10/845,905. The claims are identical. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application.

Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

7. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in

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scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

8. Claims 1-19 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-19 of copending Application No. 10/845,905. The claims are identical. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

9. Applicant is advised that should claim 11 be found allowable, claim 6 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. Also, should claim 19 be found allowable, claim 7 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David L. Sorkin
Primary Examiner
Art Unit 1723

DLS